DISTILLED SPIRITS COUNCIL OF THE UNITED STATES

June 23, 2014

Mr. Richard R. Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 W. Randolph, Ste. 7-801
Chicago, IL 60601

Re: Draft Rules Proposed by the Wine and Spirits Distributors of Illinois/Associated Beer Distributors of Illinois and by the Illinois Liquor Control Commission Staff

Dear Mr. Haymaker:

On behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wines sold in the United States, we welcome the opportunity to respond to the draft rules proposed by the Wine and Spirits Distributors of Illinois and Associated Beer Distributors of Illinois and the Illinois Liquor Control Commission (ILCC) staff's rulemaking proposals.

The ILCC's trade practice scheme has a significant impact upon the industry's ability to market their products in Illinois. A fair and reasonable regulatory scheme is vital to the ongoing competitive viability of the approximately 1,780 brands of distilled spirits and thousands of brands of wine and beer in the Illinois marketplace.

The proposed rules represent a major "rewrite" of existing permitted trade practices that have governed industry members' activities in the Illinois marketplace. The proposed new terms, conditions and limitations warrant careful scrutiny, as well as an in-depth review of the potential impacts upon the ability of industry members to compete in a very crowded market with a plethora of beverage alcohol brands available for purchase. In that regard, we respectfully submit that the Commission should and must review its statutory mandates, existing policies and other "rules of the road" before submitting the two rulemaking proposals to the Joint Committee on Administrative Rules.

Key to a viable and sustainable regulatory system are clear, rational rules in sync with modern marketing practices, thereby enhancing brand competition and ensuring a wide selection of products for the benefit of Illinois consumers. To that end, we recommend various changes to

the proposed rules, as well as a number of revisions so that the proposals are consistent with the Illinois Liquor Control Act. Appended as Attachments A and B are our suggested revisions to the rulemaking proposals to accomplish these objectives.

Specific Comments

I. Distributors' Rulemaking Proposals

Proposed Section 100.-- Consignment Sales (new rule - converts TPP-36)

The distributors generally propose replacing the ILCC's consignment sales provisions in TPP-36, which currently are based upon TTB's consignment sales rules (27 C.F.R. Part 11), with a new rule that would substantially change and limit the obligations of distributors and other industry members to accept returned product from retailers. We oppose this proposed rule in its entirety because no reason exists to change the current approach.

The proposal sets forth the eight "ordinary and usual commercial reasons" for which return of product is allowed under the federal rules, but would impose unnecessary and unjustifiable restrictions. This proposal would unfairly shift the responsibility for and expense of unusable, unsaleable or defective product to retailers, thereby jeopardizing the valuable goodwill of a supplier's brand. This proposal would produce a result that is contrary to a marketplace serving the best interests all stakeholders.

Further, regarding return of product upon termination of a franchise, distributors propose that a supplier would be "required" (have the first right of refusal) to repurchase the terminated distributor's inventory (at the laid-in cost to the distributor plus a reasonable handling fee) and, if the supplier chooses not to do so, the terminated distributor "shall be free to sell the products based on its independent business judgment within the designated sales territory"—a breach of these provisions would constitute an illegal consignment sale. (Section (d)(5).) Further, the proposed "terms of sale" of remaining inventory by the terminated distributor may be contrary to and detrimental to the profile and positioning of the brand(s) in question in the Illinois marketplace.

These restrictions interfere with a supplier's contractual arrangements and certainly may not be in the "best interests" of the brand and its associated goodwill. Such a provision is unique among all consignment sales rules by specifying particular arrangements for disposing of inventory. Moreover, it generally is the case that the incoming distributor purchases the inventory from the outgoing distributor. There is no rational or justifiable basis for the State to intervene in the terms of a mutually-agreed upon private contract between the relevant parties.

The distributors also propose limiting the return of product that is defective, upon termination of business and by seasonal dealers only for credit against outstanding indebtedness—versus the current federal/TPP provision allowing product returns for cash or credit against outstanding indebtedness. (Sections (d)(1), (4) and (8).) The proposal to limit returns for credit only should

be rejected. To the best of our knowledge, there is no basis for this restriction and, in many circumstances, only cash and not credit would be appropriate (e.g., a credit may be worthless to a retailer that terminates its operations).

The distributors' proposal also adds a new provision whereby an industry member has no obligation to accept returns or exchanges under any circumstances. (Sections (b) and (c).) We urge the ILCC to reject this proposal because refusal to accept the return/exchange of defective product may contravene the Uniform Commercial Code. (See e.g., the implied warranty of merchantability in Uniform Commercial Code § 2-314.)

In addition, the proposal only would allow retailers to return product that may no longer be sold, upon termination of a business, change in product, or discontinued products. As provided for under the federal rule and reflected in the current TPP, return of product should be allowed for all trade buyers (i.e., distributors and retailers). (Sections (d)(3), (4), (6), and (7).) This approach ensures, for example, that, if a product discontinued by the supplier is returned to the distributor by the retailer, the distributor then would be allowed to return the discontinued product to the supplier.

Finally, the deadline set in this proposal is unclear in terms of requiring the retailer to identify visibly damaged product "immediately." (Section (b)(4).) What does "immediately" mean? If interpreted literally (viz., without any interval of time passing), compliance may be neither practical nor fair; such a stringent deadline appears to serve no purpose other than to serve as an obstacle to returning damaged product.

Proposed Section 100.-- Sponsorship of Events (new rule - converts TPP-1, TPP-3 and TPP-34)

The "sponsorship" proposal would require a supplier utilizing a third-party promotion company for an event sponsorship to obtain and submit affidavits for each event from the third-party promotion company (hosting retailers also must submit these affidavits). (Sections (g) and (h).) On many occasions, we have urged that the "per event" affidavits should be replaced with a one-time review by the ILCC of the bona fides of a particular third-party promotion company.

Under our proposal, if the ILCC is satisfied that a company is capable of providing valuable services to licensees, the ILCC would list that company on the ILCC's website or otherwise notify licensees of its favorable review. Once listed, all licensees would be free to utilize the services of that promotional company to conduct and/or assist with sponsored events.

This streamlined approach is far more efficient than the costly and time-consuming process of preparing and submitting affidavits each time a manufacturer or distributor wishes to retain a specific promotional company for an event or activity. It also enhances industry

compliance by providing a list of ILCC-approved promotional companies that would be known to all manufacturers and distributors, as well as reduces ILCC staff review time and the amount of paper in the Commission's files—be it in storage cabinets or in the ILCC's computer networks.

Promotion companies obviously would have a strong interest to ensure that they merit inclusion on the ILCC's approved list given the consequent ease of contracting business with a listed company. Similarly, licensees would have a strong interest to urge promotion companies to submit to the ILCC's review because of the obvious efficiencies in using a company on the ILCC list.

Finally, the listing process would ensure that the ILCC has the opportunity to review and determine the bona fides of a promotion company. Such review provides the ILCC with "up-front" confidence about the independence and value of a third-party promotion company and thereby avoids the burdensome process of reviewing affidavits submitted for each promotion company for each individual event.

We also urge the ILCC to reject the proposed prohibition against industry members "discriminating" among retailers when sponsoring events and from repeatedly sponsoring events for one retailer or group of retailers to the exclusion of similarly situated retailers. (Section (k).) Certain venues provide the facilities, capacity and other attributes necessary and/or appropriate for the sponsored event. This proposal would hinder the ability of industry members currently permitted under TPP-3 to utilize retail locations that can accommodate their sponsored events. Further, there should be an express provision in any "sponsorship" rule that there is no limit on the number of times a sponsorship can be conducted at a major sports or entertainment venue where a concessionaire holds a retail license.

The proposal provides that third-party promoters cannot be "directly or indirectly" affiliated with or under the "control" of the industry member or retailer "in any manner." This provision should be clarified so that this overly broad prohibition does not apply to promoters pursuing activities authorized by that industry member. (Section (c).)

Similar to TPP-3, the proposal allows "incidental" references to the retailer in advertising for the sponsored event, but does not retain the TPP-3 example of such a reference, viz., "the location of the event." (Section (i).) This example provides useful clarification and should be retained. Section (i) also should specifically state that "the location of the event" includes the name, address and telephone number of the retailer.

Proposed Section 100.-- Tastings, Product Sampling and Test Marketing (new rule - converts TPP-14)

The proposed rule would extend the off-premise registration requirement to on-premise tastings, the "per event" affidavit requirement to both on and off-premise tastings, and require all those events to meet the objective/purpose/criteria of a sponsorship event. We question the justification and/or rationale for the imposition of these new requirements/conditions; consequently, we oppose these new requirements.

For example, section (b) of this proposal would subject industry member tastings or product samplings to the distributors' proposed sponsorship of events rule. This proposal would impose a burdensome "per event" affidavit requirement upon industry members retaining third parties to conduct tastings or product samplings at an off-premise and on-premise establishment.

This expansion of the affidavit requirement set forth in the "sponsorship" rule is inappropriate and unjustified for tastings/product sampling events. Current ILCC Rule Section 100.40 already requires industry members utilizing unlicensed persons to conduct tastings or product sampling events at off-premise retail licensed establishments to register with the Commission. Adding an affidavit requirement to an off-premise tastings/product sampling event would be redundant and only create increased, needless burdens. While a registration requirement may make some sense for a non-licensee for an off-premise event, a registration requirement—much less a "per event" affidavit requirement—makes no sense for an on-premise event.

Further, the proposal to require tastings or product samplings to meet the conditions and limitations in the Commission's sponsorship rule also is "puzzling." These events simply are not "sponsored events" and have a completely different purpose. Tastings are an effective means to encourage adult consumers to sample, compare and ultimately choose a particular brand. They are a customary and longstanding practice featuring a brand or brands of product.

As defined in the Commission's rules, sponsored events may be "at a venue which sole purpose is to host live entertainment" and an "'[e]vent' means a single theme." (ILCC Rule Sections 100.330(b) and 100.10.) Distributors' sponsorship of events proposal (at section (a)) reiterates the regulatory "single theme" definition and states that such an event "includes any exhibition, performance, presentation or show for entertainment; educational, political, or religious purposes." Further, the distributors' proposal prohibits a retailer from restricting the availability of any other beverage alcohol product, or excluding or requiring the sale or offering of another industry member's product during or at the sponsored event.

Sponsored events are not and do not encompass industry member tastings events under the Commission's rules and/or otherwise. There is nothing in the State tastings statute (235 ILCS 5/6-31) to suggest that tastings should be treated as if they were sponsored events or that there is any need or justification for affidavit requirements. Further, how could a tastings event possibly be subject to the distributors' proposed prohibition against restricting or excluding the availability of any other industry member's product at the event? By its very nature, an industry

member will feature its particular brand(s) at its tastings event and "exclude" the brands of its competitors during the event—in keeping with the purpose of a tastings or product sampling, which is to disseminate product information and education about that particular industry member's beverage alcohol product(s).

Clearly, sponsorship of events has nothing to do with industry member tastings and it would be inappropriate to subject these tastings to sponsorship regulation. The proposal only would serve to impose unnecessary and impractical requirements upon industry members, effectively barring perfectly permissible tasting events.

We also question the objective and purpose of proposed section (g) regarding a "reasonable entrance fee" for a consumer at a tasting/product sampling and the proposed "conditions and limitations" (such as tracking consumer purchases) for such a fee. The proposed section also creates confusion with section (c) that provides for tastings/product sampling for which there is no charge for the consumer.

Proposed Section 100.210 Unlawful Inducements (amended rule - converts substantial portions of TPP-1, TPP-2, TPP-4, TPP-7, TPP-9, TPP-10, and TPP-34)

The distributors' parenthetical following this rule section's title (copied above) states that this section "[c]onverts substantial portions" of TPPs -1, -2, -4, -7, -9, -10, and -34. There is no indication regarding which of the current provisions of these TPPs are affected or unaffected by this proposal. Without such clarification, a full evaluation of the proposal cannot be undertaken or completed.

With this caveat, we oppose this proposal because it is overly limiting and restrictive in comparison to the universe of permissible trade practices. It would prohibit industry members from furnishing to retailers or retailers from accepting anything of value except as specifically provided in 235 ILCS 5/6-5 and 5/6-6 and the distributors' section (c) of the proposed rule. (Section (a).)

First, currently permissible industry member activities would no longer be allowed because they do not fall expressly within the above-referenced statutes or distributors' proposed subsection (3), including furnishing supplier coupons and engaging in stocking, rotating and resetting (nor is there any reference by the distributors to either TPP-11/"Consumer coupons and rebates" or TPP-25/"Stocking, Rotating and Re-setting"). (We will submit supplier coupon and stocking/rotating/resetting language to the Commission at a later stage of this proceeding in sync with current permissible practices if the intent of this proposal is to eliminate these permissible trade practice activities.)

Second, the distributors' approach is contrary to the ILCC's longstanding authority to permit additional exceptions to the tied-house policies, as articulated in TPP-1:

> Unless specifically enumerated as being allowable under the Illinois Liquor Control Act, the Rules and Regulations of this Commission, or Trade Practice enunciated by this Commission, products and services provided by manufacturers, distributors and importing distributors to retailers, as well as such products and services being asked for or received by the retailer, shall be presumed to be "of value" and in violation of the Illinois Liquor Control Act. This Commission recognizes that there may be specific situations in which trade practices which provide something of value to retailers may nonetheless be allowable, and such practices shall be reviewed on a case-by-case basis. Practices which have not received prior determination as being allowable shall be presumed to be "of value," and in violation.
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> ....Illinois statutory and regulatory provisions will generally override Federal law and regulation, especially in situations in which strictly intrastate transactions are involved. Where, however, there is no specific Illinois statutory or regulatory guidance regarding a specific issue in the area of "of value" transactions, this Commission will look to Federal law and regulation as a guide in interpreting Trade Practices under which Illinois licensees shall operate.

By not retaining these provisions, the distributors' proposal would deprive the ILCC of the flexibility to allow trade practice activities on a case-by-case basis when appropriate and/or, in the absence of State guidance, to rely upon federal trade practice law and regulation.

The proposal also omits any reference to dollar limits for permanent outside signs, permanent inside signs and temporary inside signs, which initially were set by statute and are periodically updated by the Commission pursuant to the "cost adjustment factor" provision in the statute. (See 235 ILCS 5/6-6 and TPP-10/Signage Dollar Limits.) We urge adding to the proposed inducements rule a reference to these dollar limits and a statement that the Commission will post updated dollar limits on its website.

Furnishing Point-of-Sale Materials to Distributors

The proposal seeks to adopt generally, with changes, provisions in 235 ILCS 5/6-6 and TPP-7 allowing manufacturers to sell or give point-of-sale materials to distributors. (Section (c)(1)(A).) To more accurately reflect the statutorily-permitted activity (and industry practice), we urge that this proposal be expanded to expressly allow a manufacturer and a distributor to "enter into a written agreement" regarding the furnishing of permitted signs and advertising

materials to retailers pursuant to 235 ILCS 5/6-6. By not providing for an agreement between the parties to cover these point-of-sale materials, this proposal unjustifiably could negate existing contractual provisions between a supplier and a distributor for brand marketing support.

Furnishing Permanent/Temporary/Outdoor/Indoor Signs and Advertising Materials to Retailers

We oppose the proposed definitions/descriptions of permanent and temporary outside signs and permanent and temporary inside signs to the extent they are more narrow and inconsistent with the definitions in 235 ILCS 5/6-6 and/or TPP-9. (Sections (c)(1)(B) to (E).) For example, the proposals would limit a permanent outside sign to a "[m]anufacturer's brand name or brand logo." (Section (c)(1)(B).) As stated in 235 ILCS 5/6-6, this type of sign shall include "the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbols commonly associated with and generally used in identifying the product including, but not limited to, 'cold beer,' 'on tap,' 'carry out,' and 'packaged liquor.'"

Similarly, the proposal defines the location of a permanent outside sign more narrowly ("painted on the outside walls of a retail licensed premise"), than provided by TPP-9 ("must...be displayed on the exterior of the premises, such as on the building itself, on fences, in parking lots, or upon other structures reasonably considered to be a part of the realty upon which the licensed premises operates") or by the distributors' temporary outside sign proposal ("displayed on the exterior of a retail premises, such as on the building, fences, in parking lots contiguous to a retail premises, or upon other structures reasonably considered to be part of the realty upon which the licensed premises is situated"). (The proposal also identifies permitted materials of a sign beyond painting (e.g., metal, neon or wood) without indicating the permitted location and we urge that these proposed provisions be reconciled to, among other reasons, provide clear guidance to industry members.)

Unlike TPP-9, the proposal would limit the permissibility of displaying temporary outside signs in parking lots to those that are "contiguous to the retail premise." (Section (c)(1)(C).) This new limitation would deprive a retailer the opportunity to display signage when the closest parking lot available to the retailer's customers is separated by one or several stores and should be rejected.

In lieu of the permanent and temporary outside sign proposals, we urge inclusion of the clear and consistent approach taken in TPP-9, which provides that both permanent and temporary outside signs "must...be displayed on the exterior of the premises, such as on the building itself, on fences, in parking lots, or upon other structures reasonably considered to be a part of the realty upon which the licensed premises operates."

We also would add that, as allowed by 235 ILCS 5/6-6, temporary outside signs may include retailer promotion information/announcements; that distributors and importing distributors may provide or pay for such signage or for signage with other messages (e.g.,

community goodwill expressions, regional sporting event announcements or seasonal messages); and that manufacturers may furnish distributors and importing distributors signage with these other messages, as well as manufacturer promotional announcements.

Regarding permanent inside signs, the proposal identifies only some types of these items (in addition to signs, only tap handles, neons and table umbrellas are referenced), excludes requiring certain manufacturer information on these signs, and includes the retailer information ban but not the exception allowing retail information on alcohol lists or menus. (Section(c)(1)(D).)

We urge adding to the proposal the statement in 235 ILCS 5/6-6 (which is substantively identical to the language in TPP-9) that permanent inside signs "include, but are not limited to: alcohol lists and menus that may include names, slogans, markings, or logos that relate to the retailer; neons, illuminated signs; clocks; table lamps; mirrors; tap handles; decalcomanias; window painting; and window trim" and "must include the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbol commonly associated with and generally used in identifying the product."

The proposal also states in the permanent inside sign provision that "[s]igns attached to the inside windows of a retail licensed premises are considered inside signs, whether or not they face inside or outside." (Section(c)(1)(D).) The statute (235 ILCS 5/6-6), however, more broadly provides that permanent inside signs in general, not only signs on windows, may be visible from the inside or outside of the premises. (This provision also is reiterated in TPP-9.)

Regarding temporary inside signs, the proposal does not retain the illustrative list of such items provided for in 235 ILCS 5/6-6 and TPP-9, which includes "lighted chalkboards, acrylic table tent beverage or hors d'oeuvre list holders, banners, flags, pennants, streamers, and inside advertising materials such as posters, placards, bowling sheets, table tents, inserts for acrylic table tent beverage or hors d'oeuvre list holders, sports schedules, or similar printed or illustrated materials." (Section (c)(1)(E)).

The proposal also does not include the sentence in the same section of the statute and TPP-9 stating that these provisions do not "prohibit[ ] a distributor or importing distributor from paying the cost of printing or creating any temporary inside banner or inserts for acrylic table tent beverage or hors d'oeuvre list holders for a retail licensee, provided that the primary purpose for the banner or insert is to highlight, promote, or advertise the product." We urge that these "omitted" temporary inside signs statutory/TPP-9 provisions be included in the distributors' proposed definition of temporary inside signs.

In contrast, the proposal retained the "exclusion" from the same inside sign provisions in the statute and TPP-9 for "such items, for example, as coasters, trays, napkins, glassware and cups;" i.e., these items may be sold, but not given to retailers. Distributors, however, added this "exclusion" clause in their proposed tastings rule (in section e) and not in their temporary inside

sign proposal (or anywhere in their proposed inducement rule). Consistent with the statute and TPP-9 and to eliminate any confusion, we recommend reiterating this "exclusion" clause in the temporary inside sign proposal.

The proposal does not retain the TPP-9 provision allowing the inclusion of "names, slogans, markings or logos that relate to the retailer" on temporary inside signs. (Section (c)(1)(E).) Consistent with the federal rule (27 C.F.R. § 6.84) and rules of other states, we urge the ILCC to retain this provision.

We support two of the proposed new terms for product displays: (i) setting a $300 per brand limit on all product displays furnished by an industry member at any one time in any one retail establishment and (ii) allowing the furnishing of a product display to be conditioned upon the purchase of beverage alcohol products advertised on the displays in a quantity necessary for the initial completion of the display. (Section (c)(1)(E)(ii) and (iv).) We urge the adoption of these provisions in any new rule.

The proposed "qualifications" concerning signage and other advertising materials are vague and confusing, and should be revised. (Section (c)(1)(F).) As stated in the proposal, these "qualifications" apply to "signage and other advertising materials," whereas these qualifications now apply only to outside (not inside) signs. (235 ILCS 5/6-6 and TTP-9.) Moreover, the meaning of "[m]ulti single manufacturer names, brand name or brand logo signs" is undefined and unclear (as distributors state, these names or signs "are considered one sign per brand for each brand depicted or included thereon"). We urge the Commission to retain its TPP-9 statement that "[m]ulti-logo signs count as one sign per brand for every brand depicted thereon." Finally, we also urge inclusion of a statement that this rule section is intended to implement the statutory limit of one permanent and one temporary outside sign per brand.

Charitable Donations of Alcohol Beverages and Other Items and Services

We oppose the proposal regarding product donations and services by industry members and retailers to not-for-profit organizations and special event retail licensees, which is unnecessarily narrow and restricts currently permissible activities under TPP-4. (Section (c)(2).)

First, the proposal would prohibit donations of any kind (viz., beverage alcohol, cash/financial contribution, non-alcohol product, services, equipment, or signs) that are given for "a commercial purpose" (section (c)(2)(A)), thereby extending the "commercial purpose" ban to a host of items and practices; whereas TPP-4 provides that this "commercial purpose" prohibition applies only to beverage alcohol products. The proposed "commercial purpose" ban on donations of any kind should be eliminated, as well as the ban against beverage alcohol product donations. Such bans are out-of-sync with long-established practices in other states that allow donations to not-for-profit corporations. Eliminating these bans would increase non-profit fundraising opportunities to the benefit all stakeholders.

Second, the proposal only would allow charitable donations to be made to not-for-profit organizations holding a special event retail license (section (c)(2)), while TPP-4 allows donations to be made by either a not-for-profit organization or a special event retail licensee. The proposal would deprive not-for-profit organizations that intend to serve but not sell beverage alcohol (and thus do not need a special event retail license) of the opportunity to obtain charitable donations of any kind (viz., beverage alcohol, cash/financial contribution, non-alcohol product, services, equipment, or signs). (See 235 ILCS 5/1-3.17.1.)

Furnishing Equipment

The proposal generally retains the TPP-2 provisions regarding distributors servicing draft beer or wine systems/dispensing equipment (section (c)(3)(A)); suppliers and distributors furnishing carbon dioxide filters for draft beer (section (c)(3)(L)); and distributors furnishing courtesy wagons, coil boxes and pumps for beer and wine (section (c)(3)(B)).

No justification exists to limit these activities to only beer and/or wine, or to allow these activities for distributors only and not for suppliers. We urge the ILCC to replace sections (c)(3)(A) and (L) with a rule based upon TTB's equipment and supplies rule (27 C.F.R. § 6.88), which allows the sale and servicing of equipment utilized in the modern marketplace by suppliers and distributors for beer, wine and spirits. Similarly, beer, wine and spirits suppliers and distributors should be allowed to engage equally in the activities described in section (c)(3)(B).

Consumer Advertising Specialties

The proposal only to allow industry members to furnish consumer specialties to retailers for their distribution to consumers should be rejected. (Section (c)(3)(D).) We urge the ILCC to retain the current TPP-2 provision, which allows industry members to furnish consumer specialties either directly to consumers or to retailers for distribution to consumers. The current TPP facilitates furnishing consumers with these permitted items, which are negligible in value and do not raise tied-house concerns. We urge the ILCC not to adopt this proposal and also reject the proposed recordkeeping requirement that is unnecessary and unduly burdensome. (Section (c)(3)(D).)

Finally, the proposal also would prohibit industry members from furnishing consumer specialties that are "retained, used, or not distributed" by the retailer. (Section (c)(3)(D).) We oppose this proposal that could result in violations for any "non-distribution" of specialties regardless of circumstances. Simply put, the proposal unjustifiably would constrain and limit existing trade practice activities, such as only permitting retailers, not suppliers or distributors, to provide consumers with advertising specialties and deem the "leftover" specialties that were not distributed by the retailer a "thing of value."

Furnishing Meals and Entertainment

This proposal would add an express prohibition against furnishing lodging and transportation to the current TPP-2 provision that allows industry members to provide expenses related to meals and entertainment with retailers. (Section (c)(3)(F).) At a minimum, we urge the ILCC to reject this proposal and allow industry members to provide retailers with local transportation to and from the meal/entertainment. This change would permit the supplier to provide, for example, the retailer with a cab or boat taxi ride to and from a restaurant.

The proposal also would narrow the permitted furnishing of meals and entertainment from TPP-2's "reasonable" expense limit to a "nominal hospitality" expense. We are unaware of any reason to change the current limit and oppose the use of the vague and undefined term "nominal hospitality" in place of the current "reasonable" expense limit.

Affixing Shelf Tags

We oppose the proposed prohibition against industry members using a third party to affix shelf tags at a retail premise. (Section (c)(3)(H).) As permitted historically in this State, under the federal rule (27 C.F.R. § 6.99) and in other states, we urge the ILCC to continue to allow industry members to retain third-party representatives to engage in this activity.

Listing Retailers on an Industry Member's Website

The proposal adopts generally the TPP-2 provision allowing the inclusion on an industry member's website a list of retailers that offer for sale an industry member's branded products. (Section (c)(3)(K).) This proposal would allow this practice only if (i) a retailer requests to be listed on the industry member's website and (ii) all retailers who carry the industry member's product are on the list. Compliance with both of these terms may not be possible; regardless, neither of these terms are necessary and should be eliminated. Allowing a listing only if all retailers carrying an industry member's product are so listed is an impractical and unrealistic criterion that would in essence prohibit versus allow this practice.

TPP-2 currently allows the inclusion of each retailer's name, address and telephone number, but expressly prohibits the retailer's email or website. The proposal provides that an industry member's listing shall include only the business name, business address and telephone number, and the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor's website may provide a link to a website of the retailer. We urge the ILCC to allow inclusion of the retailer's name, logo, address, telephone number, website, and email.

Separately, we urge adoption of the federal advertising service rule (27 C.F.R. § 6.98), that allows an industry member to list in its advertising in any media (e.g., television, radio, print, signage, social media) two or more retailers selling its product. As permitted under the federal rule and in other states, the advertisement may not contain the retail price of the product; this listing would be the only reference to the retailers in the advertisement and relatively

inconspicuous in relation to the advertisement as a whole; and the advertisement would not refer only to one retailer or only to retail establishments controlled, directly or indirectly, by the same retailer.

Proposed Section 100.-- Cross-tier and Tied-house Ownership Prohibitions (new rule - converts TPP-28 and TPP-39)

The proposal to add a new section where a foreign importer, importing distributor and a non-resident dealer (where that dealer acts as the primary United States importer for products manufactured outside the United States) or the duly registered agent of such manufacturer or importer that has no direct or indirect ownership interest in a brewery, distillery, winery, or any other manufacturer licensed by any licensing authority would be deemed a member of the middle tier for purposes of tied-house and cross-tier ownership or control prohibitions, and would further restrict statutory cross-tier ownership prohibitions. (Section (a).)

We oppose this proposal because "shifting" non-resident dealers (suppliers) from the upper tier to the middle tier creates "havoc" throughout the ILCC's trade practice scheme (e.g., will a non-resident dealer now be considered part of the middle tier for trade practice activities, etc.?) and creates needless confusion with Illinois' "cross-ownership" statutes, such as 235 ILCS 5/6-2, 5/6-4 and 5/6-4.5. Further, the proposal would apply to "non-resident dealers" that may not be the primary importer/primary source for a product in the Illinois marketplace, but elsewhere in the United States. As a result, the proposal could permit transshipping of a product to Illinois from other states, a result that would be contrary to existing industry member agreements and the distribution of product for and within the Illinois marketplace.

II. ILCC Staff Proposals

Section 100.10

We oppose the proposal that defines a "licensee" as (i) any person with an interest of greater than 5% in the business to be licensed by the Commission or (ii) any director, officer, managing member, manager, partner or similar person authorized to vote or make operational decisions for the business to be licensed. Extending the definition of "licensee" to include these separate persons as "licensees" is a dramatic change in beverage alcohol licensing law and is contrary to the Liquor Control Act; thus, the proposal should be rejected.

The Act already addresses the issue of how to treat persons with an ownership interest exceeding 5% and persons who are managers/agents conducting the licensed business. These individuals are part of the application process for a license, but are not deemed to be "licensees" under the Act. Simply put, the proposed definition of a "licensee" is too broad and unjustified.

As provided in 235 ILCS 5/6-2(a)(9)-(11), a license may not be issued to an applicant if a person with a greater than 5% ownership interest in the business does not meet the eligibility requirements for an applicant (with some exceptions), or if the manager or agent conducting the

business does not possess the same qualifications required by the licensee. These statutory provisions show that the Legislature directly considered how to treat these types of persons and did not decide to treat them as licensees.

Moreover, the repeated references in the Act to "licensee or officer, associate, member, representative, agent, or employee" clearly reflects the Legislature's recognition that these 'other persons' are separate from the licensee and are not to be included as licensees. (See e.g., 235 ILCS 5/6-4(a) and (e), 5/6-5, 5/6-16(a), & 5/6-16.1). The Act also treats in detail who may or may not be a licensee including, for example, approximately 20 circumstances set forth in 235 ILCS 5/6-2. No provision in the Act delegates to the ILCC the authority to change this scheme.

We also urge the ILCC not to adopt proposed rule 100.10 because it opens a "Pandora's box" of unanswered questions and potential problems for both compliance and enforcement purposes. What is the purpose of this expanded definition of "licensees"? Would such licensees be required to file their own separate applications and pay separate license fees? Would they have a separate right to exercise the privileges of a license? What other requirements, obligations and responsibilities would this rule impose upon these persons and upon the licensed business? What other consequences would this rule have for these other persons and for the licensed business? Would the ILCC be able to decide on a case-by-case basis whether to treat such a person as a licensee for different provisions of the Act? On their face, the proposed regulatory principles of what is intended by this new form of license, which in effect is a license within a license, appear to constitute an encroachment upon the current legislative scheme.

For all of these reasons, we urge the ILCC to reject this proposal.

Section 100.265

We also oppose proposed sections 100.265(c) and (d), which would expand the eligibility requirements of an applicant by requiring that certain other persons also meet the eligibility requirements, including (i) a third party service provider, promoter, landlord, etc. receiving directly or indirectly more than 5% of the revenue or profit of the licensed business, and (ii) the legal spouse of a person with a direct or indirect financial and beneficial interest in the applicant unless the spouse provides no assistance to the business or receives no direct financial benefit from it.

These proposed rules could result in denial of a license to an applicant in circumstances that are unfair and have no bearing on the applicant's fitness. For example, the applicant could be denied a license if a spouse, with no involvement in the applicant's beverage alcohol business, either is not a U.S. citizen or has an unrelated conviction for a misdemeanor "opposed to decency and morality." (235 ILCS 6/6-2(a)(3) & (6).)

We urge the ILCC to reject proposed section 100.265(c) and (d).

Section 100.285(c) Happy Hours/Private Function Exception

We urge the ILCC to eliminate the prohibitions against private functions "highlight[ing] the consumption" of product or being a "promotional event for any license holder or for any commercial purpose" because they would unnecessarily restrict legitimate marketing activities conducted by suppliers. The primary purpose of these private functions is to promote a brand or brands, not to provide a gift or service to retailers. This activity perfectly is permissible as "a specific social or business occasion" under the statutory definition of a private function. (235 ILCS 5/1-3.36.)

Section 100.440 Retailer Specific/Private Labeling

It is impossible to opine upon the "retailer specific/private labeling" proposal without any information or insight regarding the objective or purpose of the proposal, as well as what activities the staff intends to address by this proposal. Before the ILCC moves forward with such a proposal, these seminal questions need to be addressed, as well as other questions raised by the provisions of the proposal.

For example, what are the federal rules referenced in section (a) that purportedly relate to private labels? What is the meaning and import that the use of a "retailer specific/private label" applies only to the trademark owned by the retailer in section (b)? Generally, trademark ownership rights are connected with a particular good? Consequently, what is the meaning and objective of this proposed section?

What is the meaning of affixing a "retailer specific/private label" to a "generic alcoholic liquor brand"? What does a "generic alcoholic liquor brand" mean and how would a "generic alcoholic liquor brand" be defined? Each of our members has unique brands with associated goodwill. Simply put, what does proposed section (c) intend to address and what is its purpose? Further, what is the objective and import of this proposed requirement to, for example, the consumer and/or otherwise given that the contents of the container would be identical?

What does proposed section (d) mean—"Nothing in this Section permits a distributor to sell a brand of alcoholic liquor exclusively to one retailer or group of retailers"? How would this provision work with the other sections of the proposed rule? Without any explanation, the provisions of the proposed rule not only appear to be contradictory, but also out of "sync" with the Illinois statute referenced therein (235 ILCS 5/6-17.1).

We look forward to the necessary responses to these questions before any evaluation can be undertaken and/or a comment can be made vis-à-vis this proposal.

Conclusion

Thank you for the opportunity to provide our views regarding the distributors' trade practice proposals and the ILCC staff's proposed rules. We respectfully submit that the adoption of our recommendations will serve the interests of the State and its citizens, as well as enhance the fairness and reasonableness of Illinois' regulatory scheme.

We also would be grateful for responses to the questions raised in our submission about some of these proposed rules. Finally, given that there has been very limited time to respond to these rulemakings, we look forward to providing supplemental comments as more clarity is provided regarding these initiatives.

In that regard, we stand ready to work with the ILCC in this important endeavor. As always, if you have any questions concerning our recommendations, please do not hesitate to contact us.

Best regards,

Dale C. Szyndrowski
Vice President, Central Region

Attachments

LJO:bca

Attachment A

Our suggested language to the distributors' proposed rules is set forth in bold typeface and suggested deletions are struck through.

Section 100.--- Consignment Sales [New Rule; Converts TPP-36]

a) It is unlawful for a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor to sell, offer for sale, or contract to sell to any retailer, or for any such retailer to purchase, or to contract to purchase any products (a) on consignment or conditional sale, pursuant to which the retailer has no obligation to pay for the product until sold; or (b) with the privilege of return; or (c) on any basis other than a bona fide sale; or (d) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the retailer or the agreement to acquire other products from the retailer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

b) Unless there is a bona fide business reason for replacement of damaged or defective alcoholic liquor product when delivered, the product may not be replaced free of charge to the retailer. Replacement of alcoholic liquor damaged while in a retailer's possession constitutes the providing of something "of value" and a violation of Sections 235 ILCS 5/6-4, 5/6-5, and 5/6-6. ~~A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor is under no obligation to accept the return of products for the reasons stated in Sections (d)(1-8) below.~~

1) A manufacturer with the privilege of self-distribution, importing distributor or distributor may not accept the return of alcoholic liquor products as "breakage" if the product was damaged after delivery and while in the possession of the retailer. The self-distributing manufacturer, importing distributor or distributor may replace damaged cartons or packaging at any time.

2) Under no circumstances may alcoholic liquor products or other compensation be furnished to a retailer for product breakage which occurs as a result of handling by the retailer, its agents, employees, or its customers.

3) If the alcoholic liquor product has been damaged prior to or at the time of actual delivery, the product may only be exchanged for an equal quantity of identical product or returned for ~~case~~ **cash** or credit. If identical product is unavailable, the exchange will be permissible for similar type product.

4) If the alcoholic liquor product has been damaged prior to or at the time of actual delivery, the product may only be exchanged within a reasonable time after delivery. For product that the pre-delivery damage is visible at the time of delivery, the retailer must identify the damaged product ~~immediately~~ **within a reasonable time after delivery**. If the damage is latent and not visible at the time of delivery, the retailer must notify the manufacturer, with self-distribution privileges, importing distributor, or distributor of the pre-delivery damage within fifteen (15) days of delivery, or date of invoice, whichever is later, in order to request the return of the product.

c) It is unlawful to sell, offer to sell, or contract to sell alcoholic liquor products with the privilege of return for any reasons, other than those considered to be "ordinary and usual commercial reasons", arising after the product has been sold. ~~A manufacturer, importing distributor, or distributor is under no obligation to accept a return or to make an exchange for any product. A distributor that elects to make an authorized exchange of product or return of product for case or credit does so at its sole discretion.~~

d) *Ordinary and usual commercial reasons* for the return of alcoholic liquor products are limited to those set forth hereinbelow:

1) Defective products. Products which are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or **cash or** credit against outstanding indebtedness.

2) Error in products delivered. Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, no later than fifteen (15) days from date of delivery or date of invoice, whichever is later, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

3) Products which may no longer be lawfully sold. Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which a ~~retailer~~ **trade buyer** has no control, a particular size or brand is no longer permitted to be sold.

4) Termination of business. Products on hand at the time a ~~retailer~~ **trade buyer** terminates operations may be returned for **cash or** credit against outstanding indebtedness. This does not include a temporary seasonal shutdown.

5) Termination of franchise. When a manufacturer, non-resident dealer, foreign importer, importing distributor, or distributor has sold products for cash or credit to a distributor and the distributorship arrangement is subsequently terminated by the

brand owner, inventory of the product on hand may be returned for cash or credit against outstanding indebtedness. ~~Should the manufacturer, non-resident dealer, foreign importer or importing distributor offer in writing to repurchase the inventory on hand from the importing distributor or distributor based on the laid-in cost to the importing distributor or distributor, together with the payment of a reasonable handling fee, and should the product not be defined under the Act as "beer" or "malt beverage", the terminated importing distributor or distributor is forbidden to sell the inventory of product on hand, except to the manufacturer, non-resident dealer, foreign importer or importing distributor that holds the rights to said brand of alcoholic liquor products. Should the manufacturer, non-resident dealer, foreign importer or importing distributor fail or refuse to repurchase the terminated importing distributor or distributor's inventory of product on hand, then the importing distributor and distributor shall be free to sell the products based on its independent business judgment within the designated sales territory, under Section 5/6-9 of the Act, notwithstanding the manufacturer, non-resident dealer, foreign importer or importing distributor's filing of a Withdrawal of Registration under said Section and appointment of a successor distributor to the brands and territory.~~ However with respect to beer and malt beverage products as defined under the Act, any provision of this paragraph inconsistent with the Illinois Beer Industry Fair Dealing Act, the Illinois Beer Industry Fair Dealing Act prevails.

6) Change in product. A ~~retailer's~~ **trade buyer's** inventory of a product which has been changed in formula, proof, label or container may be exchanged for equal quantities of the new version of that product.

7) Discontinued products. When a manufacturer, non-resident dealer, foreign importer or importing distributor discontinues the production or importation of a product, a ~~retailer~~ **trade buyer** may return product for cash or credit against outstanding indebtedness.

8) Seasonal dealers. Manufacturers, non-resident dealers, foreign importers, importing distributors or distributors may accept the return of product from retailers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for **cash or** credit against outstanding indebtedness.

e) Without limitation, the following are specifically not considered *ordinary and commercial reasons* to justify a return of alcoholic liquor product:

1) Overstocked and slow-moving alcoholic liquor products. The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."

2) Seasonal alcoholic liquor products. The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters, certain

95

distinctive bottles, and out-of-code seasonal beer or malt beverages, does not constitute a return for "ordinary and usual commercial reasons."

Section 100.--- Sponsorship of Events [New Rule; Converts TPP-1, TPP-3 and TPP-34

A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may sponsor an event at a retailer's premises, subject to the following conditions and limitations and pursuant to the advertising restrictions contained in Section 100.330 and the signage dollar limitation contained in Sections 5/5-6 of the Liquor Control Act:

a) "Event" is defined in Section 100.10 as "a single theme". For the purposes of this Rule on sponsorships, it includes any exhibition, performance, presentation or show for entertainment, educational, political or religious purposes.

b) A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor must provide all advertising and promotional items without cost, or make payment directly to a third-party promoter (e.g., a non-licensed entity participating in the creation of the event); provided, however, that any payment made to a third-party promoter shall be solely for advertising and promotional costs.

c) Third-party promoters cannot directly or indirectly be affiliated with or under the control of any manufacturer, non-resident dealer, foreign importer, importing distributor, distributor or retailer of alcoholic beverages in any manner**; except that a third-party promoter may pursue activities authorized by the manufacturer, non-resident dealer, foreign importer, importing distributor, distributor or retailer**.

d) The funds paid by a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor to a third-party promoter shall represent the fair market value of such advertising or services rendered by it, to or on behalf of the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor.

e) No funds paid to the third-party promoter by any manufacturer, non-resident dealer, foreign importer, importing distributor or distributor shall be paid, directly or indirectly, to the retailer or any person affiliated with the retailer.

f) Every manufacturer, non-resident dealer, foreign importer, importing distributor and distributor shall retain copies of signed paid receipts issued by any third-party promotion companies itemizing the advertising and promotional costs for each sponsored event in accordance with Rule 100.130 and Rule 100.280.

g) ~~Every~~ **Third-party promoters included on the Commission's list of promotion companies can be utilized by any** manufacturer, non-resident dealer, foreign importer, importing distributor and distributor sponsoring any retail event~~, must, prior to the event, obtain from the third-party promoter a signed affidavit containing the following information:~~

96

~~i) the identification and address of affiant and third-party promoter;~~
~~ii) the name, license number and address of participating retailer;~~
~~iii) a description of the event;~~
~~iv) the services to be provided by third-party promoter;~~
~~v) the cost of services to be provided; and~~
~~vi) a statement that no unlawful inducement or thing "of value" is being furnished to the affiant or retailer, directly or indirectly, by means of the event.~~

~~Such affidavit shall be filed with the Commission prior to the event and any manufacturer, non-resident dealer, foreign importer, importing distributor or distributor sponsoring and event, directly or indirectly must retain a copy of said affidavit in accordance with Commission Rules 100.130 and 100.280.~~

~~h) Every retailer hosting an event that is sponsored by any manufacturer, non-resident dealer, foreign importer, importing distributor or distributor, must, prior to the event, submit to the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor, a signed affidavit containing the following information:~~

~~i) the identification and address of affiant and retailer;~~
~~ii) the name and address of third-party promoter;~~
~~iii) a description of the event;~~
~~iv) the services to be provided by third-party promoter;~~
~~v) the costs or value of the services to be provided by the third-party promoter; and~~
~~vi) a statement that no unlawful inducement or thing "of value" is being furnished to the affiant or retailer, directly or indirectly, by means of the event.~~

~~Such affidavit shall be filed with the Commission prior to the event and a copy provided to every sponsoring manufacturer, non-resident dealer, foreign importer, importing distributor or distributor sponsoring any such event. Each retailer and sponsoring manufacturer, non-resident dealer, foreign importer, importing distributor or distributor must retain a copy of said affidavit in accordance with Commission Rules 100.130 and 100.280.~~

h) To review and ensure the bona fides of a third-party promoter, the Commission may require the company to submit for Commission review the following information:

(i) the name and address of the third-party promoter and all directors, partners, stockholders, and/or employees thereof. The names of stockholders and employees need not be furnished if the third-party promoter is a publicly traded corporation; and/or

(ii) an affidavit that no person listed in (1) has a financial interest, directly or indirectly, in any retail licensee; and/or

(iii) the third-party promoter's existing agreements with licensees to conduct promotions on the licensee's behalf.

i) The Commission will prepare and maintain a current list of all promotion companies approved by the Commission. The list will be continuously posted on the Commission's website and will be provided to any licensee and/or other person upon his or her request.

j) A licensee utilizing a third-party promoter on the Commission's list to conduct permissible promotional activities may continue to utilize the company until the Commission furnishes written notification to the licensees that the third-party promoter has been removed from the Commission's list. This Commission action shall become effective only after the expiration of a reasonable time period to allow a licensee to obtain alternate promotion services.

k) If a promotion company is not listed by the Commission, licensees will be required to obtain affidavits in the form required by the Commission prior to each sponsored event and prior to conducting any service for a retailer.

~~i~~ **l)** The focus of all advertising of the event must give primary emphasis to the event, and if applicable, the educational, charitable, philanthropic, artistic, religious, or any other reason for the event. Any reference to the retailer in advertising shall be incidental to the event **(e.g., stating the location of the event, which may include the name, address and telephone number of the retailer)** and comply with Commission Rule 100.330.

~~j~~ **m)** The sponsoring retailer, except a special event licensee, at which a sponsored event takes place may not restrict the availability of any alcoholic liquor, nor may it exclude or require the sale or offering for sale of the alcoholic liquor products of any other manufacturer, non-resident dealer, foreign importer, importing distributor or distributor during or at the event.

~~k~~ **n)** ~~No~~ **A** manufacturer, non-resident dealer, foreign importer, importing distributor or distributor ~~shall discriminate among retailers when sponsoring events, and may not repeatedly sponsor events for one retailer or group of retailer to the exclusion of other similarly situated retailers~~ **must make reasonable attempts to conduct events at retail locations which can accommodate such events ("retail locations" not including major sports or entertainment venues (such as stadiums, concert halls and convention centers) where there is a concessionaire that holds a retail license).**

Sec. 100 Tastings, Product Samplings and Test Marketing [New Rule; converts TPP-14]

a) "Product Sampling" or "tastings" mean a supervised presentation of alcoholic liquor products to the public at a retailer location for the purpose of disseminating product information and education, with consumption of alcoholic liquor products being an incidental part of the presentation.

b) Alcoholic liquor product sampling and tastings may be conducted by a manufacturer, non-resident dealer, foreign importer, importing distributor, distributor retailer or a non-licensee, which complies with Section 100.40 and registers as a tasting representative at retail licensed premises. Only alcoholic liquor products registered with the commission may be tasted or sampled. Tastings and product sampling may be advertised. ~~The conditions and limitations contained in Commission Rules 100.30 and 100._ (Sponsorship of Events) shall apply to any manufacturer, non-resident dealer, foreign importer, importing distributor or distributor sponsored tastings or produced samplings.~~

c) Retail premise alcoholic liquor tastings and product samplings, for which there is no charge to the consumer, may be provided in the following amounts: distilled spirits ¼ oz., wine 1 oz., and beer 2 oz.

d) A licensee may not conduct alcoholic liquor tastings or product sampling at a non-licensed premise. Licensed premises include those premises wherein a Special Use or Special Event License has been issued by the local unit of government having regulatory authority over the promises pursuant to the Act and the Illinois Liquor Control Commission.

e) Cups napkins, glassware, coasters and trays shall not be deemed to be inside signs or advertising materials and may only be sold to retailers by a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor or distributor.

f) If a retailer previously purchased the alcoholic liquor product to be tasted or sampled, a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may pay for such product at the retailer's original cost. If the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor supplies the alcoholic liquor product for the tasting or sampling, the product remaining after the tasting or sampling must be returned to the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor.

g) Alcoholic liquor product samplings or tasting in which the consumer pays a reasonable entrance fee in relation to the amount of alcoholic liquor available for tasting or sampling is permitted, subject to the following conditions and limitations:

1) The retailer must charge a uniform admission price, and are prohibited from treating patrons differently.

2) The retailer must use tickets, punch cards or other such reliable means of tracking the amount of alcoholic liquor purchased and consumed by each attendee.

3) Retailer's legal responsibility service duties remain unchanged with tasting or product sampling events.

4) The retailer must hold an on-premise consumption license issued by both the local governmental unit and the state. However, such license or permit may be a special use or special event licensee.

h) Test Marketing. "Test Marketing" means the testing of new alcoholic liquor products or alcoholic liquor products unfamiliar to the sampler through a marketing firm, or the like. The Commission will grant approval for the test marketing of alcoholic liquor on a case-by-case basis, only upon written request. Requests shall state with specificity the parameters of the testing, and include, at a minimum, the following information:

1) The name and address of the marketing firm conducting the Test Marketing.

2) The location where the Test Marketing will be conducted.

3) The number of participants involved.

4) Representation that the age of the participants is 21 years of age or older.

5) The duration of the Test marketing.

6) The total amount of alcoholic liquor involved in the Test Marketing and the total amount of alcoholic liquor to be given or furnished to each participant.

Section 100.210 Unlawful Inducements [Amended Rule; Converts substantial portions of TPP-1, TPP-2, TPP-4, TPP-7, TPP-9, TPP-10 and TPP-34]

a) Application.

(i) Except as provided in ~~Sections 5/6-5, 5/6-6 and Section (e) hereinbelow~~ **the Liquor Control Act, the rules and regulations of the Commission, or otherwise by the Commission,** no person having a retailer's license, or any officer, associate, member representative or agent of such licensee shall accept, receive or borrow money, or anything else of value, or accept or receive credit directly or indirectly from any manufacturer, importing distributor or distributor

of alcoholic liquor, or from any person connected with it or in any way representing or from any member of the family of, such manufacturer, importing distributor, distributor or wholesaler, or from any stockholders, members or partners of any entity engaged in manufacturing, distributing or wholesaling of such liquor, or from any officer, manager, agent or representative of such manufacturer. Nor, shall any manufacturer, importing distributor, or distributor, directly or indirectly, give or lend money or anything of value, or otherwise loan or extend credit, sell, supply, furnish, give, or pay for, or loan or lease, any signage, furnishing, fixture, or equipment on the premises of a place of business of another licensee authorized under the Liquor Control Act to sell alcoholic liquor at retail, to any retail licensee or to the manager, representative, agent, officer or director of such licensee.

(ii) In addition to the permitted activities that are specifically enumerated, there may be specific situations in which something of value is furnished to retailers that also may be allowable under the Liquor Control Act, and such practices shall be reviewed on a case-by-case basis by the Commission.

(iii) The Liquor Control Act and these rules and regulations of the Commission will generally override Federal law and regulation, especially in situations in which strictly intrastate transactions are involved. Where, however, there is no specific provision of the Liquor Control Act or these rules and regulations regarding a specific issue, the Commission will look to Federal law and regulation as a guide in interpreting the Liquor Control Act.

b) Indirect Inducement through third party arrangements. The furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services, or other thing of value by a manufacturer, non-resident dealer, importing distributor, or distributor to a third party, where the benefits resulting from such things of value, directly or indirectly, flow to an individual retailer, any officer, director, representative or agent, is the indirect furnishing of a thing of value within the meaning of 235 ILCS Sec. 5/6-5 and 6-6.

c) Exceptions.

1) Signage and other advertising materials. In furtherance of the exceptions contained in Sections 5/6-5 and 5/6-6:

A) Point of Sale. For the purposes of this Section, "point-of-sale" materials shall mean promotional materials placed at or on a retail licensed location designed to attract consumer interest or call attention to the featured product, **as described under 235 ILCS 6/6-6(i) to (iv)**. Importing distributors and distributors may purchase point-of-sale materials from manufacturers or a manufacturer's designated supplier **and such manufacturer or the manufacturer's designated supplier may sell or enter into**

an agreement to sell to a distributor or importing distributor point-of-sale materials for the purpose of furnishing, giving, lending, renting, installing, repairing, or maintaining such signs or advertising materials to or for any retail licensee in this State; provided, however, any purchase by an importing distributor or distributor from a manufacturer or a manufacturer's designated supplier shall be voluntary and the manufacturer may not require the importing distributor or distributor to purchase signs or advertising materials from the manufacturer or manufacturer's designated supplier. Point-of-sale materials purchased by importing distributors or distributors may be purchased at a value below the cost to the manufacturer. Free point-of-sale materials may be provided by manufacturers to importing distributors and distributors without limit on the amounts provided. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may furnish free advertising, posters, signs, brochures, hand-outs or other promotional devices or materials to any unit of local government owning or operating any auditorium, exhibition hall, recreation facility or other similar facility holding a retailer's license; provided, that the primary purpose of such promotional devises or materials must be limited to the promotion of public events being held at such a facility. A unit of local government owning or operating such a facility holding a retailer's license may accept such promotional materials designed primarily to promote public events at the facility.

B) Permanent Outside Signs. Permanent outside signs include signs painted on the outside walls of a retail licensed premises, and those made of metal, neon, wood or other materials reasonably considered to be of a substantially permanent nature. **These signs must be displayed on the exterior of the premises, such as on the building itself, on fences, in parking lots, or upon other structures reasonably considered to be a part of the realty upon which the licensed premises operates.** ~~Manufacturer's brand name or brand logo featured on a permanent outside sign on a retail premises shall be limited to being included on only single permanent outside sign.~~ **Permanent outside signs shall be limited to one outside sign, per brand, in place and in use at any one time, and such signs shall bear only the manufacturer's name, brand name, trade names, slogans, markings, trademark, or other symbols commonly associated with and generally used in identifying the product including, but not limited to, "cold beer," "on tap," "carry out," and "packaged liquor."**

C) Temporary outside signs. Temporary outside signs include signs of a temporary nature or construction, displayed on the exterior of a retail premises, such as on the building **itself, on** fences, in parking lots ~~contiguous to a retail premises~~, or upon other structures reasonably considered to be a part of the realty upon which the licensed premises ~~is situated~~ operates. Signs attached to the outside windows of retail licensed premises are considered exterior signs. **Temporary outside signs shall be limited to one outside sign, per brand and such signs must include the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbol commonly associated with and generally used in identifying the product.**

Temporary outside signs may also include, for example, the product, price, packaging, date or dates of a promotion and an announcement of a retail licensee's specific sponsored event, if the temporary outside sign is intended to promote a product, and provided that the announcement of the retail licensee's event and the product promotion are held simultaneously. However, temporary outside signs may not include names, slogans, markings, or logos that relate to the retailer. A distributor or importing distributor, however, may bear the cost of creating or printing a temporary outside sign for the retail licensee's specific sponsored event or bear the cost of creating or printing a temporary sign for a retail licensee containing, for example, community goodwill expressions, regional sporting event announcements or seasonal messages, provided that the primary purpose of the temporary outside sign is to highlight, promote, or advertise the product. Subject to other limits in this section, temporary outside signs provided by the manufacturer to the distributor or importing distributor may also include, for example, preprinted community goodwill expressions, sporting event announcements, seasonal messages, and manufacturer promotional announcements. A distributor or importing distributor shall not bear the cost of such manufacturer preprinted signs.

D) Permanent inside signs. Permanent inside signs, include signs of a permanent nature and which are located within a retail licensed premises**, whether visible from the outside or inside of the premises**. ~~Tap handles and neon's are included as permanent inside signs.~~ **These signs include but are not limited to alcohol lists and menus that may include names, slogans, markings, or logos that relate to the retailer; neons, illuminated signs; clocks; table lamps; mirrors; tap handles; decalcomanias; window painting; and window trim.** ~~Signs attached to the inside windows of retail licensed premises are considered inside signs, whether or not they face inside or outside.~~ **Except as provided for alcohol lists and menus,** ~~P~~permanent inside signs may not include the name, slogans, markings or logo that relate to the retailer. Signs displayed in an adjacent courtyard, patio, public right of way, referred to as "outdoor patios", "beer gardens", or "sidewalk cafes," that are part of a retailer's licensed premises, are considered inside signage. ~~Table umbrellas located on a retail licensed premise are considered permanent inside signs and subject to the permanent inside sign dollar limitations.~~ **Permanent inside signs must include the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbol commonly associated with and generally used in identifying the product.**

E) Temporary inside signs.

i) Temporary signs include but are not limited to lighted chalk boards, acrylic table tent beverage or hors d'oeuvre list holders, banners, flags, pennants, streamers, and inside advertising materials such as posters, placards, bowling sheets, table tents, inserts for acrylic table tent beverage or hors d'oeuvre list holders, sports schedules, or similar printed or illustrated materials;

however, such items, for example, as coasters, trays, napkins, glassware and cups shall not be deemed to be inside signs or advertising materials and may only be sold to retailers. Temporary inside signs may include names, slogans, markings or logos that relate to the retailer.

A distributor or importing distributor may pay the cost of printing or creating any temporary inside banner or inserts for acrylic table tent beverage or hors d'oeuvre list holders for a retail licensee, provided that the primary purpose for the banner or insert is to highlight, promote, or advertise the product. All temporary inside signs and inside advertising materials may be displayed in an adjacent courtyard or patio commonly referred to as a "beer garden" that is part of the retailer's licensed premise."

ii) Temporary inside signs **also** include product displays, provided that the **following** conditions and limitations ~~prescribed in subsections (iii) and (iv))~~ are met.

~~i)~~ **iii)** Definition. "Product display" means any racks, bins ,barrels, casks, shelving, coolers, buckets, glass or transparent display cases, racks, or similar items the primary function of which is to hold and display alcoholic beverage products at point of sale at or on a retail licensed premises. Product displays also include display enhancers, which are exclusive of non-trade fixtures and equipment items that convey the product display sales programming message to consumers. Product displays are considered inside temporary signage.

~~ii)~~ **iv)** Conditions and limitations. The total value of all product displays furnished by a manufacturer, importing distributor or distributor under this section may not exceed $300 per brand at any one time in any one retail establishment. A manufacturer, importing distributor or distributor may not pool or combine dollar limitation in order to provide a retailer a product display valued in excess of $300 the statutory limit. The value of a product display is the actual cost to the manufacturer, importing distributor or distributor who initially purchased it. Transportation and installation costs are excluded.

~~iii)~~ **v)** All product displays must bear conspicuous and substantial advertising matter on the product or the manufacturer, importing distributor or distributor which is permanently inscribed or securely affixed.

~~iv)~~ **vi)** The giving or selling of such product displays may be conditioned upon the purchase of the alcoholic liquor products advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the manufacturer, importing distributor, or distributor on the retailer in order for the retailer to receive or obtain the product display.

F) Dollar Limitations on Signage. Pursuant to 235 ILCS 6/6-6, dollar limitations are imposed on permanent outside signs, permanent inside signs and temporary inside signs. The Commission is required to adjust these dollar limitations annually by applying a "cost adjustment factor" (a percentage equal to the change in the Bureau of Labor Statistics Consumer Price Index or 5%, whichever is greater). The Commission shall publish on its website a list of these dollar limits.

~~F)~~ **G)** General. The following qualifications shall apply to **outside** signage ~~and other advertising materials~~. **Retailers are allowed to have one permanent and one temporary sign per product brand displayed on the exterior of the licensed premises.**

i) There is no limit on how many times a single manufacturers name, brand name or brand logo may be contained on signage and other advertising materials. ~~Multi single manufacturer names, brand name or brand logo signs are considered one sign per brand for each brand depicted or included theron.~~ **Multi-logo signs count as one sign per brand for every brand depicted thereon.**

ii) Two-sided banners, flags, pennants, posters or streamers, or a multi-sided or wrap around sign displaying a manufacturers name, brand name or brand logo, is considered one sign.

iii) Inflatable signs are subject to the provisions and limitations of Section 5/6-6 of the Act.

iv) Signage restrictions do not apply to special event licenses for events not held at retail licensed premises.

v) If a building or location has more than one retail licensed premises, each retailer within that building or location shall be allowed outside signage within the limitations of Section 5/6-6 of the Act; provided, however, that the retailer has a direct access to the outside. If a retail location has no direct access from the outside, no exterior signs shall be permitted for that retailer.

2) Charitable Donations. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may make contributions of cash, alcoholic products, non-alcoholic products, services, equipment or signs to a not-for-profit charitable organizations, as defined in the Illinois Liquor Control Act, and ~~which holds~~ a Special Event Retailer license subject to the following conditions and limitations:

~~A) Such charitable donations may not be given for a commercial purpose. The proof of a donative intent is on the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor.~~

If A) is retained, we alternatively recommend the following revisions to this section:

A) ~~Such~~ eCharitable donations **of alcoholic products** may not be given for a commercial purpose. The proof of a donative intent is on the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor.

B) The Special Event Retailer must be free to sell and expose for sale, other brands of alcoholic products, based on its independent business judgment.

C) Signage dollar limitations contained in Section 5/6-6 do not apply to signage and advertising materials donated to the Special Event Retailer.

~~D) Advertising and signage referencing the manufacturer, non-resident dealer, importing distributor or distributor must be reasonably commensurate with a donative intent to insure that the charitable donation is not being made for a commercial purpose, in violation of Rule 100.280.~~

3) Specific items or services. The following specific items and services constitute exceptions under 235 ILCS 5/6-5 and 5/6-6, provided these items and services are not finished or conditioned upon an activity that would otherwise violate Sections 5/6-5 and 5/6-6, or any other provisions of the Act.

~~A) Distributors servicing, balancing, or inspecting draft beer or wine systems at regular intervals, and providing labor to replace or install rods, taps, faucets, fittings, and lines in draft beer or wine dispensing equipment, shall not be considered a subsidy. However, free cleaning of coils by a distributor or by a company whose services are paid for by a distributor shall be considered a subsidy, or something of value in violation of Sections 6-5 and 6-6 of the Act [325 ILCS 5/6-5 and 6-6].~~

A) A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor is allowed to sell equipment or supplies to a retailer if the equipment or supplies are sold at a price not less than the cost to the manufacturer, wholesaler and their authorized agent who initially purchased them, and if the amount is collected within 30 days of the date of the sale; to install dispensing equipment and accessories at the retailer's establishment as long as the retailer bears the cost of initial installation; and to furnish, give or sell coil cleaning service to a retailer.

"Equipment and supplies" include but are not limited to glassware or similar containers made of other material, dispensing equipment, dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment), or ice. (Glassware bearing conspicuous and substantial advertising, which is a consumer advertising specialty, is excluded from this definition.)

"Dispensing accessories" include but are not limited to items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

B) Courtesy wagons and/or coil boxes and pumps may be supplied by a distributor free of charge one time per year for a one day period to a retail liquor licensee for picnics held by the retailer for the retailer's customers. However, this is not construed to mean that free beer ~~or~~, wine **or spirits** may also be supplied to a retail licensee.

C) Courtesy wagon and/or coil boxes may be supplied by a distributor for a picnic, carnival or social event that is given by or under the auspices or sponsorship of a municipal, religious, charitable, fraternal or social organization that will be licensed as a Special Event Retailer. However, this is not to be construed to mean that free beer or wine may also be supplied to a retail licensee.

D) Consumer Specialties. Items commonly referred to as "consumer specialties" such as, for example, hats, t-shirts, jackets, sweat shirts, mugs, steins, key chains, sunglasses, lighters and the like, which are intended to be given to and received by the customer, shall be distributed **in person by the manufacturer, non-resident dealer, distributor, importing distributor or foreign importer licensee or** by the retailer or an employee of the **manufacturer, non-resident dealer, distributor, importing distributor or foreign importer** or retail licensee ~~and sufficient records maintained so as to verify that the items are being received by the consumer. Such consumer specialties which are determined to be retained, used, or not distributed by the retail liquor licensee will be determined to be items "of value" accepted by such retailer, and not items "of value" to have been given by the manufacturer, non-resident dealer, foreign importer, importing distributor, or distributer subjecting the retail licensee to potential discipline by the commission.~~

Generally, a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may not provide free items to a retailer, if such items inure to the benefit of the retailer; as such items would be considered something "of value". However, a retailer may purchase consumer advertising specialties from a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor. If the retailer pays for the consumer advertising specialties, such items may be retailer specific.

Consumer advertising specialties may be provided for free to a retailer if the retailer gives such items away to the ultimate consumer. If the retailer does not pay for the consumer advertising specialties, then such items may be brand or promotion specific only, but may not be retailer specific.

E) Courtesy Wagons.

Retail Licensees

Pursuant to Commission Rule 100.210(3), a distributor or manufacturer may provide a courtesy wagon or coil boxes and pumps, free of charge, one time per year, for a one day period, for picnics held by a retailer. The manufacturer or distributor, however, may not supply free beer, wine or spirits for such event. If the event is held off the retail licensee's premise, the retail licensee must first obtain a special use permit pursuant to 235 ILCS 5/5-1(q).

Special Event Retailers

Pursuant to Reg. Sec. 100.210(2) a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may not supply product directly to a special event retailer licensee. Pursuant to 235 ILCS 5/1-3.17.,1 a Special Event Retailer is an educational, fraternal, political, civic, religious or non-profit organization which sells or offers for sale beer or wine, or both, only for consumption at the location and on the date(s) designated on a special event retail license. Such organization must obtain a Special Event Retailer's License pursuant to 235 ILCS 5/5-1(e). In addition, a manufacturer or distributor may supply, free of charge, coil boxes and pumps, to any special event licensee. Such services are not considered something "of value" under 235 ILCS 5/6-5 and 5/6-6.

F) Meal and entertainment expenses. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may incur ~~nominal hospitality~~ **reasonable** expenses related to meals and entertainment with retailers. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor ~~shall not~~ **may** pay a retailer's expense for ~~travel or lodging~~**, local transportation to and from the meals and entertainment**.

G) Participation in retail association activities. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may participate in legitimate retail association activities under the following conditions and limitations:

i) Display of their products at a retail convention or trade show;

ii) Rent display booth space, if the rental fee is not excessive and is based on the same rate and formula paid by all exhibitors;

iii) Provide nominal hospitality, where it is done as a separate activity or in conjunction with a banquet or dinner;

iv) Purchase tickets to functions and pay registration fees, if the identical registration fees paid are not excessive and the same as paid by all attendees;

v) Make reasonable payments for advertisement in programs or brochures issued by a retailer association at a convention or trade show, if total payment for all such advertisements does not exceed $300 per year for any retailer trade association.

H) Assisting in retailer pricing. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may not perform functions for retailers that are usually performed by a retailer in the normal operations of its business. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor shall not affix prices to product on behalf of a retailer. Pricing of product includes affixing price stickers directly to product or entering prices into a retailer's computer system. The affixing of "shelf tags", which identify the product and price of the product, may be affixed to the shelf, cold box, or display, as part of point-of-sale advertising material , subject to the provisions of Section 5/6-6 of the Act, after the product has been placed on shelves or in cold boxes by the retailer. ~~At no time, however, may a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor delegate or contract this retailer service to any third party.~~ If the stocking involves movement and a change in the placement of the product on the shelf, the "shelf tags" may be moved by the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor to the new position of the product at the retail licensed premises.

I) Retailer warehousing. A retailer may store and stock alcoholic beverages only on its state licensed premises.

J) Retailer storage on license premises of wine purchased by consumer.
Retailers may store wine purchased by consumers on its licensed premises under the following conditions and limitations:

i) The sale of the wine is complete before the storage arrangement is undertaken;

ii) The consumer has taken legal title to the wine and the risk of loss has been passed with the legal title;

iii) The wine purchased is of a size which would be appropriate for a consumer to purchase for personal consumption;

iv) Sufficient books and records are maintained by the retailer, on its licensed premises to satisfy the sale and storage fee paid by the consumer to the retailer.

K) Listing of retailers on suppliers' websites. The listing of the names and addresses of all retail licensees who carry for sale the products of a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor, may be listed on the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor's websites, for purposes of providing truthful, accurate, and up-to-date

information to consumers concerning the availability of alcoholic beverage products, subject to the following conditions and limitations:

~~i) The retailer requests to have its business information included in the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor's website retailer listing;~~

~~ii)~~ **i)** The retailer listing ~~shall~~ **may** include only the business name, business address, ~~and~~ telephone number, **email, and** ~~. The manufacturer, non-resident dealer, foreign importer, importing distributor or distributor's website may provide a~~ link to a website of the retailer; ~~provided, such linking is made available to all retailers;~~

~~iii)~~ **ii)** The retailer listing does not provide specific product information, including pricing or product promotions and the listing is the only reference to the retailers and is relatively inconspicuous in relation to the website or webpage as a whole;

~~iv) The retailer's listing shall include all retail licensees carrying the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor's products, which listing may be on a city, town or village basis, zip code or by any system which assures that all retailers within said system are listed; and~~

~~v)~~ **iii)** The inclusion a retailer on the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor's website shall be at no direct or indirect cost to the retailer.

L) Advertising Service: A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may list in its advertisement the names and addresses of two or more retail licensees selling the alcoholic beverages of the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor provided that:

i) the advertisement does not also contain the retail price of the product;

ii) the listing is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole; and

iii) the advertisement does not refer only to one retailer or only to retailers controlled directly or indirectly by the same retailer.

~~L) Carbon Dioxide Filters. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may sell, supply, furnish, give or pay for, or otherwise provide to and install for a retailer, carbon dioxide filters under the following conditions and limitations:~~

110

~~i) The cost to the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor for such filters, including labor and installation costs, does not exceed $50.00;~~

~~ii) The filters are installed in such a manner that it protects and cleans the CO2 supply for all the draft beer in the retailer's delivery system and not just the products carried by the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor supplying the filter;~~

~~iii) The filters must be made available to all retailers that sell draft beer in the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor's sales territory;~~

~~iv) The manufacturer, non-resident dealer, foreign importer, importing distributor or distributor may not limit the availability of the filter to only the retailers that carry the brands of the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor.~~

Section 100. Cross-tier and Tied-house Ownership Prohibitions [New Rule, converts TPP-28 and TPP-39]

~~a.) Except as provided in Sections 6-2 and 6-4 of the Liquor Control Act, direct or indirect tied-house and cross-tier ownership or control is prohibited. A Foreign Importer, importing distributor, distributor and non-resident dealer, wherein such non-resident dealer acts as the primary United States importer of such alcoholic liquors, if manufactured outside the United Sates, or the duly registered agent of such manufacturer or importer, and has no direct or indirect ownership interest in a brewery, craft brewery, distillery, craft distillery, rectifier, wine manufacturer, wine maker, or any other manufacturer of alcoholic liquors licensed by any licensing authority, shall be considered within the middle tier of the State's mandated three-tier regulatory system for purposes of the tied-house and cross-ownership or control prohibitions.~~

~~b)~~**a)** It shall be unlawful for any distiller licensed anywhere to have any stock ownership or interest in any distributor's or importing distributor's license wherein any other person has an interest therein who is not a distiller and does not own more than 5% of any stock in any distillery. Nothing herein contained shall apply to any such distillers or their subsidiaries or affiliates, who had a distributor's or importing distributor's license during the licensing period ending June 30, 1947, which license was owned in whole by such distiller, or subsidiaries or affiliates of such distiller.

~~c)~~ **b)** Non-management, hourly employees of a licensee of one tier of the 3-tier regulatory system with no direct or indirect ownership interest or control of that licensee, may be employed as an hourly employee at another licensee of a different tier of the 3-tier regulatory system.

111

Attachment B

Our suggested language to the ILCC's proposed rules is set forth in bold typeface and suggested deletions are struck through.

~~Section 100.10~~

~~"Licensee" or "License Holder" means any person, whether an individual or business entity, with a direct or indirect equitable interest of greater than 5% in the business to be licensed to manufacture, import, distribute or sell alcoholic liquor unless otherwise expressly specified in the Illinois Liquor Control Act.~~

~~In addition, "Licensee" or "License Holder" means any director, officer, managing member, manager, partner or similar person who has the authority to vote on or make general operational decisions for the business to be licensed to manufacture, import, distribute or sell alcoholic liquor. The Illinois Liquor Control Commission shall have the authority to review specific facts to determine whether or not such voting authority or operational decision making is of a sufficient nature to classify the person as a "Licensee" or "License Holder".~~

* * * *

100.265 - License Eligibility; Beneficial Owner

a. Under the investigative authority granted to the Commission in 235 ILCS 5/3-12(a)(5) and upon request by the Commission, an applicant or existing license holder shall disclose all persons possessing a direct or indirect financial and beneficial interest in a business seeking a license or a business issued a license.

b. The applicant or license holder shall provide all necessary supporting documentation that identifies all persons possessing a direct or indirect financial and beneficial interest in the business.

~~c. A person, including but not limited to a third party service provider, promoter, landlord/sublandlord, directly or indirectly receiving more than 5% of the revenue or profit generated by the license holder is a beneficial owner of the business and shall meet all eligibility requirements of the Liquor Control Act for the license holder.~~

~~d. A legal spouse of any person who possesses a direct or indirect financial and beneficial interest in the licensed business shall meet all eligibility requirements of the Liquor Control Act for a license holder unless the legal spouse proves by preponderance of the evidence that he or she provides no assistance to the business nor receives any direct financial benefit from the operation of the business.~~

* * * *

100.285 Happy Hours

* * * *

c. No retail licensee or employee or agent of such licensee shall sell, offer to sell or serve to any person an unlimited number of drinks of alcoholic liquor during any set period of time for a fixed price, except at private functions not open to the general public. 235 ILCS 5/6-28(b)(2);

* * * *

2) Private Function Exception – A private function "means a prearranged private party, function, or event for a specific social or business occasion, either by invitation or reservation and not open to the general public, where the guests in attendance are served in a room or rooms designated and used exclusively for the private party, function, or event." 235 ILCS 5/1-3.36;

3) Private Function Burden – The license holder has the burden of proving they have complied with the conditions of the private function exception;

4) Conditions of a Private Function:

(a) Prearrangement – Retail license holder shall agree in writing before the event with a specific host of the event in which alcoholic liquor is pre-sold per the expected number of guests. Terms of the agreement can be amended during the event to accommodate extended hours or larger than expected guest attendance

(b) Specific Social or Business Occasion – To qualify as a "private function":

(1) The function ~~shall not~~ **may** highlight the consumption of alcoholic liquor;

(2) The function ~~shall not~~ **may** be a promotional event for any license holder or for any commercial purpose;

(c) Invitation or Reservation Not Open to the Public:

* * * *

Sally H. Jefferson
Regional Government Affairs Manager

June 20, 2014

Mr. Richard Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 West Randolph Street, Suite 7-801
Chicago, Illinois 60601

Dear Rick:

On behalf of the Wine Institute, a nonprofit trade association representing over 800 California wineries, we appreciate the opportunity to submit for the ILCC's consideration brief comments on proposed Trade Practice rules pending before the Commission.

First, Wine Institute is pleased to participate in discussions with representatives of the Wine and Spirits Distributors of Illinois and DISCUS regarding several of the proposed rules submitted by the Illinois distributors. Our areas of concern deal with certain provisions involving Unlawful Inducements, Consignment Sales, and Cross-Tier and Tied House Ownership Prohibitions and we greatly appreciate the opportunity to continue working with our industry partners in an effort to resolve our collective questions and concerns prior to the ILCC taking final action on these proposed trade practice policies.

Regarding the Commission's proposal on Retailer Specific/Private Labeling, we are unclear as to what the proposed term "generic alcoholic liquor brand" means. From our industry's perspective, private labeled products can comprise a blend of grape varietals and therefore would not meet the definition of "generic." We respectfully urge that the proposed language be clarified to provide clearer guidance as to what would or would not be covered under such a requirement.

Thank you and the Commission for your consideration of our comments and for your work to draft rules to replace existing Trade Practice Policies. Wine Institute looks forward to continuing to work with you, the Commission as well as our industry partners in support of developing Trade Practice rules that are clear and workable.

Sincerely,

Sally H. Jefferson

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